

TTAB

TRADEMARK
Docket No. 110.2*1/GJN/P622

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

WALTERS GARDENS, INC.

Opposer,

v.

PRIDE OF PLACE PLANTS, INC.

Applicant.

Opposition No. 91153755

**MOTION TO SUSPEND
PROCEEDING AND REQUEST FOR
EMERGENCY TELEPHONE
HEARING**

Applicant, Pride of Place Plants, Inc. ("PoPP") hereby moves for a three month suspension of the opposition proceedings. Opposer, Walters Gardens, Inc. ("Walters") has refused to stipulate to the requested suspension, necessitating PoPP's preparation and filing of this motion.

PoPP previously scheduled the testimonial deposition of Rick Sorensen for October 15, 2004. However, on October 6, 2004, Mr. Sorensen informed PoPP's counsel via facsimile that he had contracted a serious illness rendering him unable to attend the scheduled deposition. This facsimile transmission is attached hereto as Exhibit A. After receiving Mr. Sorensen's facsimile, PoPP's counsel promptly informed Opposer of Mr. Sorensen's malady and requested that Opposer stipulate to a three month suspension to allow Mr. Sorensen time to recover from his ailment.

However, in an email communication to PoPP's counsel dated October 19, 2004, Opposer's counsel indicated Opposer's refusal to stipulate to the requested extension, remarking



11-01-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #24

that Opposer considered Mr. Sorensen's malady to be nothing more than a delay tactic. This email communication is attached hereto as Exhibit B.

To counter Opposer's attempts to discount his illness, Mr. Sorensen secured a note from Dr. Wolfgang Wetzer, Mr. Sorensen's primary care physician, indicating the seriousness of Mr. Sorensen's condition, and forwarded the note by facsimile transmission to PoPP's counsel on Monday, October 25, 2004. Dr. Wetzer's note is attached as Exhibit A to the Declaration of Rick Sorensen in support of this motion.

The requested suspension will allow Mr. Sorensen the time needed to recover from his illness before being required to attend his testimonial deposition. Given the seriousness of Mr. Sorensen's condition, and the refusal of Opposer to stipulate to the requested extension, PoPP requests an emergency telephone hearing to resolve this issue.

If the above-described motion to suspend the opposition proceedings is granted, the new trial dates would be as follows:

Testimony period for Applicant to reopen:	January 26, 2005
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Testimony period for Applicant to close:	February 9, 2004
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Rebuttal testimony period to close:	March 23, 2004
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At the time PoPP informed Opposer of Mr. Sorensen's illness, two weeks remained in its

testimony period. Accordingly, PoPP only requests these two weeks after the three month suspension within which to present evidence. PoPP respectfully requests approval of the above trial dates.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 10/25/2004

By Gary J. Nelson

Gary J. Nelson

Attorneys for Opposer

P.O. Box 7068

Pasadena, California 91109-7068

626/795-9900

**facsimile
TRANSMITTAL**

Date: October 6, 2004
No. of Pages: 3 (including this cover sheet)
Fax No.: (250) 655-0306

PLEASE DELIVER THE FOLLOWING PAGES IMMEDIATELY TO:

Name: Mr. Rick Sorenson
Pride of Place Plants
Phone: (250) 656-7963
Your Ref:
From: Gary J. Nelson
Re:
File: P622:110.2*1

Personal & Confidential

Dear Gary

*Please request an cancellation of this meeting &
an extension to the entire case.*

*6 months ago after a routine dentist visit I
contacted a routine resistant strain of Bacteria
which has now gone systemic in my blood stream.
I will be in contact with you.*

Regards Rick S.

For Office Services Use Only
Return Fax to ELIZABETH B. LAVALLEE

Christie, Parker & Hale, LLP
350 West Colorado Boulevard
Post Office Box 7068
Pasadena, CA 91109-7068
626-795-9900
Fax: 626-577-8800

confidential

The Information in this transmission is confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone collect, and return the original message to us at the above address via U.S. mail. We will reimburse you for postage. Thank you.

Gary Nelson

From: Kane, Barry C. [KaneB@mjsc.com]
Sent: Tuesday, October 19, 2004 4:18 AM
To: Gary Nelson
Cc: Fodor, Nicole L.
Subject: RE: P622:110.2*1 PIILU Opposition

Gary:

I regret to reply our client will not agree to the extension of time that you seek. Our client has spoken with others who say they know Mr. Sorenson, and believe this is a delay tactic.

I await your motion to alter the calendar.

Regards,
Barry Kane

-----Original Message-----

From: Gary Nelson [<mailto:Gary.Nelson@cph.com>]
Sent: Mon 10/18/2004 5:38 PM
To: Kane, Barry C.
Cc:
Subject: P622:110.2*1 PIILU Opposition

Barry:

This is a follow up to my voice mail message of earlier today. Please advise whether Walter's Gardens is willing to stipulate to a three month extension of the proceeding to enable Mr. Sorenson time to recover from his illness. Thanks.

Gary J. Nelson, Esq.
Christie, Parker & Hale, LLP
350 W. Colorado Blvd., Suite 500
P. O. Box 7068
Pasadena, CA 91109-7068
Phone: (626) 795-9900
Fax: (626) 577-8800
gary.nelson@cph.com
<http://www.cph.com>

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If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete all electronic copies and destroy any hard copies.

10/19/2004

CERTIFICATE OF MAILING AND SERVICE

I certify that on October 25, 2004, the foregoing **MOTION TO SUSPEND PROCEEDING AND REQUEST FOR EMERGENCY TELEPHONE HEARING** is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on October 25, 2004, the foregoing **MOTION TO SUSPEND PROCEEDING AND REQUEST FOR EMERGENCY TELEPHONE HEARING** is being served by mailing a copy thereof by first-class mail addressed to:

Barry C. Kane, Esq.
MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
250 Monroe Avenue, N.W., Suite 800
P.O. Box 306
Grand Rapids, Michigan 49501-0306

By 

Gary J. Nelson
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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WALTERS GARDENS, INC.

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DECLARATION OF RICK
SORENSEN IN SUPPORT OF
MOTION TO SUSPEND
PROCEEDINGS AND REQUEST FOR
EMERGENCY TELEPHONE
HEARING

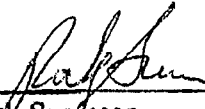
I, Rick Sorensen, declare:

1. I am the owner of Applicant, Pride of Place Plants, Inc. I make this declaration of my personal knowledge, and if called as a witness, could and would competently testify to each of the following facts.

2. On October 6, 2004, I informed counsel for Pride of Place Plants, Inc. that I had contracted an illness preventing me from attending my testimonial deposition previously scheduled for October 15, 2004. I have since been tentatively diagnosed with an autoimmune disorder having many facets.

3. On October 25, 2004, I obtained a note from my primary care physician, Dr. Wolfgang Wetzler, detailing my condition. A true and correct copy of the note from Dr. Wetzler is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed on this 25th day of October, 2004, in British Columbia, Canada.



 Rick Sorensen

LEN PAS590566.1-10/22/04 2:00 PM

CERTIFICATE OF MAILING AND SERVICE

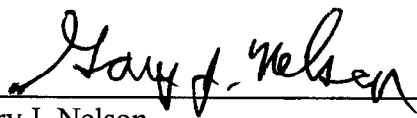
I certify that on October 25, 2004, the foregoing **DECLARATION OF RICK SORENSEN IN SUPPORT OF MOTION TO SUSPEND PROCEEDING AND REQUEST FOR EMERGENCY TELEPHONE HEARING** is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on October 25, 2004, the foregoing **MOTION TO SUSPEND PROCEEDING AND REQUEST FOR EMERGENCY TELEPHONE HEARING** is being served by mailing a copy thereof by first-class mail addressed to:

Barry C. Kane, Esq.
MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
250 Monroe Avenue, N.W., Suite 800
P.O. Box 306
Grand Rapids, Michigan 49501-0306

By



Gary J. Nelson
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

W. WETZER, M.D., INC.
B.Sc., M.D., C.M., (McGill), C.C.F.P

DIPLO. SPORTS MED & AVIATION MED.
FAMILY PHYSICIAN & SURGEON

7784 East Saanich Road, Suite 101
Saanichton, BC V8M 2B3

Phone (250) 652-9121 (24 hours)
Fax (250) 652-0306

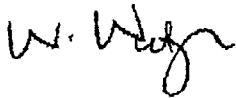
Friday, October 22, 2004

To Whom It May Concern:

Re: Rick Sorenson
DOB: 16 May 1952

This man is well known to me and has a chronic illness rendering him unfit to travel at present.
Duration of this incapacity is unclear at yet.

Sincerely,



W. Wetzler, M.D.

WW/ra